IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 2000 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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Blank Name - Appellant(s)
Versus
MANGALBHAI HIRABHAI PATEL (ABETTEDD) & 6 - Opponent(s)

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Appearance :
MR. IM PANDYA APP for Appellant(s) : 1,
None for Opponent(s) : 1 - 2, 5,
MR RASHESH A RINDANI for Opponent(s) : 3 - 4,6 - 7.

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 11/04/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE BANKIM.N.MEHTA)

1. The appellant – State has filed this

appeal under Section 378 of the Code of Criminal Procedure, 1973 challenging the judgment and order of acquittal dated 31-3-2004 rendered by the Additional Sessions Judge, Fast Track Court No. 4, Bharuch in Sessions Case No. 51 of 1993 acquitting the respondent accused for the offence punishable u/ss 147, 148, 149, 326, 307, 504, 337 of the I.P. Code and for the offence punishable u/s 25 (c) (a) of the Indian Arms Act as well as for the offence punishable u/s 135 of the Bombay Police Act.

2. In brief, the prosecution case was that complainant Shivsinh Badharsinh filed a complaint on 12-7-1992 alleging that he is rendering honorary service as Sarpanch of Anakhi village and also doing agricultural work at village Anakhi; that there are 150 houses of Patel community and five houses of Darbar community in the village; that earlier one Mangalbhai Hirabhai Patel was Sarpanch of village but since last two years he has been elected as Sarpanch, therefore, Patel community had grudge against him and there were frequent altercations between them; that in May 1992, one Gulam of village Dabha was

kept as a guard after passing resolution by Anakhi Gram Panchayat and Patel community had also kept separate guard for village Anakhi; that on 11-7-1996 around 18-00 hours he went to see the crop of cotton sown in his field and when he reached near the water tank, one Nagji Shanker came there with pistol and started saying after pointing pistol that there was loss of Rs.13000/- in previous year as he had kept guard and this year also guard is kept therefore who will bear the expenses of Rs.18,000/-; that meanwhile Mangalbhai Hirabhai with rifle, Chhotabhai Gordhanbhai and Kantibhai Shanabhai with pistol surrounded him and started giving abuses; that his son Pravin who was following him ran away and Chhitubhai Bhailal, Rajendra Ranchhod, Ajit Udesinh, Dadubha Jashbhai, Sombhai Lallubhai Bariya, Savita Arman and Babubhai etc. of village came there to rescue him so Mangalbhai Hirabhai from his rifle and Nagji Shanker and Chhotabhai Gordhanbhai from their pistols fired shots towards them; that on account of firing persons named above and others sustained injuries.

3. On the basis of the complaint, the offence was registered as I – CR No.85 of 1992 before Jambusar Police Station for the offences punishable u/ss 147, 148, 149, 307, 323, 337, 504 of the I.P. Code and u/s 25 (1) (c) of the Arms Act as well as u/s 135 of the Bombay Police Act and investigation was started. During the course of investigation, muddamal weapons were seized and statement of the witnesses were recorded. The accused were arrested. On completion of the investigation, charge sheet was laid before the learned J.M.F.C.,Jambusar for the aforesaid offences. As the offence was exclusively triable by the Sessions Court, the case was committed to the Sessions Court, Bharuch and was registered as Sessions Case No. 51 of 1993. The learned Addl. Sessions Judge, Bharuch framed charge Exh. 4 against the accused. The charge was read over and explained to the accused who pleaded not guilty to the charge and claimed to be tried. Therefore, the prosecution led evidence to prove the charge. On completion of recording of the evidence, the learned trial Judge explained to the accused the incriminating circumstances appearing in the evidence

against them. The accused explained the incriminating circumstances in their further statement recorded u/s 313 of the Code of Criminal Procedure and denied having committed any offence. Accused Nos.3,4, 6 and 7 also filed written statement and further explained that no weapons are recovered from them; that one Rajeshbhai Gordhanbhai Patel had filed complaint against the witness of this case wherein Rifle was recovered from Jashbhai Kesrisinh; that Rajesh Gordhanbhai, Janak Nagjibhai Patel and Navnitbhai Bhailalbhai were injured in that incident; that the accused in that case were acquitted. It is further explained that on 11-7-1992 at about 4-30 p.m. there was a quarrel between Nagji Shanker and the complainant about fencing thereafter at about 6-00 p.m. the witnesses of this case caused injuries by firing by other weapons and offence as I -CR No. 86 of 1992 was registered at Jambusar Police Station against them, therefore, with a view to raise defence in that case false case is filed, that they were not present at the time of incident but case is filed only because the accused are leaders in the village and there are political disputes since

many years between them. The accused also filed several documents with the written statement.

4. After hearing the learned A.P.P. for the State and learned advocate for the accused, the trial Court found that prosecution failed to prove the charge levelled against the accused therefore acquitted them for the offences charged against them. Being aggrieved and dissatisfied by the impugned judgment, State has preferred this appeal.

5. We have heard learned A.P.P. for the State at length and in great detail. We have also perused the impugned judgment and record and proceedings of the case.

6. In order to prove the charge against the accused, the prosecution examined complainant P.W. 1 Shivsinh Badharsinh at Exh. 50. According to the witness, when he reached near water-tank while going to his field accused Nagjibhai Shankerbhai Patel came with pistol and picked up quarrel with him and thereafter pointed the pistol. Meanwhile, accused Mangalbhai Hirabhai with rifle, accused

Chhotabhai Gordhanbhai Patel and accused Kantibhai Shivabhai Patel with pistol surrounded him and started giving abuses. Therefore, his son Pravin who was following him returned and called others from the village to rescue. Thereafter, accused Mangalbhai Hirabhai Patel, Nagjibhai Shankerbhai and Chhotabhai Gordhanbhai fired shots and on account of firing several persons sustained injuries. The witness in his cross-examination admitted that an offence was registered against him and others alleging that they formed illegal assembly and possessed weapons like pistol, rifle, 'dharia' sticks, spear etc. and were prosecuted. The witness also admitted that accused Mangalbhai had filed complaint against him and one Jashbhai and that there used to be two groups at the time of election of Sarpanch and that Patels generally won the elections. The witness also admitted that when he was Sarpanch he had imposed tax and the Patels had objected to that tax by filing litigation and the resolution to levy tax was set aside and the decision was challenged by filing revision but it was also dismissed. The witness denied that his son Pravin was

with him when the incident occurred.

7. The prosecution produced complaint at Exh.161. It appears to have been filed on 12-7-1992. It is alleged therein that accused Mangal Hira was armed with rifle, accused Nagji Shanker and Chhotabhai Gordhanbhai armed with pistols fired shots from their weapons and caused injuries to the witnesses and his son Pravin who was following him ran away. It is very strange that though the incident occurred on 11-7-92 the complaint was filed on 12-7-1992. There is no explanation offered for delay in lodging the complaint. It is true that delay is not always fatal but considering the strained relations between the complainant and the accused and also considering the fact that the accused had also filed a complaint against the witness and others; delay attaches significance. Therefore, in our view, delay is fatal to the prosecution and possibility of false implication cannot be ruled out.

8. The prosecution also examined P.W. 2 Somabhai Lallubhai at Exh. 56. The witness turned hostile and did not support

prosecution case. The witness was cross-examined by the learned A.P.P. and was confronted with his police statement. In the cross-examination the witness admitted that he gave false deposition with a view to save accused. In view of this evidence, this witness cannot be relied upon.

9, The prosecution examined P.W. 3 Rajendrabhai Ranchhodbhai at Exh. 57. The evidence of this witness indicates that he had sustained injuries by firing from rifle but he failed to identify the weapon. According to the witness, he was injured by accused Mangalbhai Hirabhai against whom case has abated on account of his death. The witness was also injured by stick but he did not give name of assailant. The medical certificate Exh. 27 indicates that the injuries were possible by fire arm which was allegedly used by accused Mangal Hirabhai. Therefore, evidence of this witness does not implicate any of the respondents.

10. The prosecution examined P.W. 4 Pravinsinh Shivsinh at Exh. 60. According to the witness, accused Mangalbhai Hirabhai had fired three

shots from his rifle and caused injuries to P.W. 11 Hathesinh Kesarisinh. According to the witness accused Nagjibhai Shankerhai Patel and accused Chhotabhai Gordhanbhai Patel fired three shots but there is no evidence to indicate that any one sustained injuries. The witness admitted that cross-case was filed against him and his field is adjoining to the field of accused Nagjibhai and there was dispute with accused Nagjibhai Shankerbhai in respect of the boundary of the field since last few years. The witness also admitted that on account of political rivalry there were disputes between two communities since years. The witness has identified the muddamal article No.7. In view of the fact that there were disputes between the two groups since many years and as cross case was also filed against the witness in respect of the same incident, it would not be safe to rely upon his evidence to connect the respondents with the offence.

11. The prosecution examined P.W. 5 Ranjitbhai Harmanbhai at Exh. 67. According to the witness he was passing near the place of incident and sustained injury on left hand

finger with stick by accused Shantibhai. The witness also deposed that about the injuries to others by firearm but has not specifically stated about the role attributed to each of the accused. The complaint Exh.161 does not indicate presence of this witness. Similarly, it is not prosecution case that accused Shantilal Bhailal was holding stick. Therefore, it is difficult to believe that the witness was present at the time of incident and sustained injuries in the incident.

12. The prosecution examined P.W. 6 Dabhai Parshotambhai at Exh. 68. The witness deposed that accused Mangalbhai had rifle and had caused injuries to the complainant. The witness has no knowledge about firing by other persons. The witness was declared hostile and was further examined by learned A.P.P. but the evidence does not implicate any of the respondents.

13. The prosecution examined P.W. 7 Chhaganbhai Raisangbhai at Exh. 69. The evidence of this witness indicates that there were two groups of Darbars and Patels in the village and there were disputes

between them. It also indicates that about 150 to 200 persons were pelting stones but it does not indicate the role attributed by each of the respondent accused. The witness sustained injuries by firearm but has not deposed as to by whom he had sustained injuries. The evidence also indicates that Patels had filed cases against them for theft. In view of the fact that the respondents belonged to Patel community and the witness belonged to a community against whom cases were filed by Patel community possibility of false implication cannot be ruled out as the witness would be interested in seeing that the respondents are implicated in the offence. Therefore, the evidence of this witness does not inspire confidence.

14. The evidence of P.W. 8 Gangaben Melsangbhai Exh. 70 indicates that accused Nagji Shanker, Chhotabhai Gordhanbhai and accused Kantilal Shivabhai had fired shots from pistol and she sustained injuries. This evidence also indicates that the incident occurred on account of election disputes between accused Mangalbhai Hirabhai and the complainant but there is no evidence

that accused Kantilal had pistol and the witness was injured by firing from such weapon. There is no evidence to indicate that the witness sustained injuries by pistol allegedly used by accused Kantilal. Therefore, the evidence of this witness cannot be relied upon.

15. The evidence of P.W. 9 Geetaben Ghanshyambhai Exh. 71 indicates that accused Mangalbhai Hirabhai and Nagjibhai Shankerbhai came with rifles and she sustained injuries by accused Nagji Shanker while she was playing and she did not see members of Darbar and Patel community assembled. According to prosecution case accused Nagji Shanker was having pistol. Therefore, the oral evidence is contrary to prosecution case. Moreover, the witness did not see people assembled and she sustained injuries all of sudden while she was playing. In view of this evidence, in our view, though the witness was injured in the incident, it would be difficult to believe that she had seen the accused firing from the weapon which caused injury to her.

16. The evidence of P.W. 10 Raysingbhai Bhikhabhai Exh. 77 indicates that accused Mangalbhai was holding rifle and accused Kantilal Shivabhai, Nagji Shanker and Chhotalal Gordhan were holding pistol. It also indicates that accused Mangalbhai had fired one shot and three shots were fired from pistols and he sustained injuries on account of firing. The evidence does not indicate as to from which weapon the witness sustained injuries. Even there is no evidence to indicate that three pistols were used in the offence. The witness also admitted that he belongs to the group of complainant and that there was stone pelting and he heard noise of firing while he was running away on account of stone pelting. The witness also admitted that a case was filed against him for causing injury to 'Patels'. Therefore, it appears that the witness sustained injuries while running away from the place of the incident and could not have seen the accused. The evidence does not indicate the role attributed by each accused and therefore it does not implicate the respondents in the offence.

17. P.W. 11 Hathesinh Kesarisinh is examined at Exh. 78. The evidence of this witness indicates that he had sustained injuries by firing from rifle by accused Mangalbhai Hirabhai. The witness deposed that other persons were injured on account of firing from pistols but he has not deposed as to who caused the injuries. In our view, the deposition of this witness does not implicate the respondents.

18. P.W.12 Chhitabhai Bhailalbhai Exh. 82 turned hostile and has not supported the prosecution case. The witness has been confronted with his police statement but the witness has denied about statement made before the police.

19. P.W. 13 Harijan Dahyabhai Vitthalbhai does not throw any light on the prosecution case nor does he implicate any of the respondents in the offence except that accused Mangalbhai caused firing.

20. P.W. 14 Dadubha Jashbhai Exh.84 deposed that he sustained injuries by firing from pistol by accused Kantilal Shanabhai but there

is no evidence that the accused was having pistol and the witness sustained injuries by firing from such weapon. The witness also deposed that accused Kantilal was holding stick. Therefore, it is difficult to ascertain whether the accused was holding stick or pistol. The witness also admitted that an offence in respect of the same incident was registered against them and that he is nephew of the complainant. The evidence of this witness also indicates that there were disputes between the complainant, P.W. 1 Shivsinh and Patels about keeping guard and the incident occurred on account of that dispute. In view of this, in our view, false implication of the respondents cannot be ruled out. Therefore, evidence of this witness does not inspire confidence.

21. The deposition of P.W. 15 Shardaben Naranbhai Exh.86 indicates that she sustained injuries by firing from rifle by accused Nagjibhai and Mangalbhai. There is no evidence to indicate that the witness sustained injury by firing from rifle. Accused Nagjibhai was allegedly holding pistol. Therefore, the evidence is contrary

to the prosecution case. The witness also admitted that she was tutored by P.W.4 Pravinsinh. Therefore, in our view, the evidence of this witness cannot be relied upon.

22. The evidence of P.W. 16 Mansinhbhai Somabhai Exh. 87 indicates that he sustained injuries by firing from rifle by accused Mangalbhai and accused Nagji, Kantilal and Chhotalal were having pistols. The witness was allegedly injured by firing from rifle but there is no evidence in that regard except the oral version. The witness did not give history of his injuries to the doctor. The evidence also indicates that there were about 30-40 people at the place of incident and the witness belonged to Patanwadia community. In view of the fact that there were disputes between Patel community and Patanwadia community it would be risky to rely upon the evidence of this witness.

23. P.W. 17 Babubhai Somabhai Exh.88, P.W. 18 Shanabhai Sursang Exh. 90, P.W.20 Mohanbhai Narasang Exh. 94, Panch witness P.W. 26

Iqbalbhai Ahmedbhai Exh.132, P.W. 27 Amarsang Kashbhai Exh. 138 have turned hostile and not supported the prosecution case. The witnesses were confronted with their statement and contents of panchnama but nothing is brought out implicating the respondents in the offence.

24. The evidence of P.W. 19 Manubhai Chhotabhai Exh.92 indicates that he was not present at the time of incident but came to know about the same from P.W. 9 Geetaben. Therefore, the evidence of this witness cannot be relied upon to connect the respondents with the offence.

25. The evidence of P.W. 21 Savitaben Armanbhai Exh. 95 indicates that she sustained injury by firing from rifle by accused Mangalbhai. It also indicates that while the witness was going towards water-tank she heard a loud noise and she sustained the injury. Therefore, it is difficult to believe that she could have seen accused Mangalbhai firing the shot. Similarly evidence of P.W. 22 Ajitsinh Udesinh Exh.96 also do not indicate that he sustained

injury from firing by accused Mangalbhai.

26. The prosecution examined panch-witness P.W. 23 Ramanbhai Chhaganbhai at Exh. 98 and produced panchanama at Exh. 99 in respect of the muddamal articles recovered from the place of the incident. The muddamal includes a knife. It is not prosecution case that any of the accused was having knife. The evidence of this witness also indicates that he was examined as a witness in the case filed against the complainant and the panchnama was not drawn under his instructions. Therefore, panchanama Exh. 99 cannot be relied upon.

27. The prosecution also examined P.W. 24 Natvarbhai Ashabhai at Exh. 104 a panch in whose presence muddamal rifle was recovered from the house of accused Mangalbhai Hirabhai. The witness has not been able to identify the weapon recovered from the house. Therefore, panchnama Exh. 105 does not implicate the respondents in the offence.

28. The prosecution examined P.W. 25 Dr. Narendrabhai Gunvantbhai at Exh. 112. The

witness examined the injured persons and deposed about the injuries found on the person of the injured. The witness also deposed that police 'Yadi' was sent subsequently. The deposition of this witness also indicates that injured Gangaben Melsangbhai, Shardaben Dahyabhai, Sokabhai Lallubhai, Geetaben Lallubhai, Chhaganbhai Raysingbhai, Savitaben Harmanbhai, Ismailbhai Valibhai, Ajitsinh Udesinh, Babubhai Somabhai, Mansang Somabhai, Ranjitbhai Harmanbhai, Mohanbhai Narsangbhai, Dadusinh Jashwantsinh, Rajendra Ranchhod, Chhitubhai Bhatabhai and Raysangbhai Bhikhabhai had sustained injuries which were possible by use of fire arms. The witness denied that the injured did not give history of injuries and deposed that the history was recorded in case-papers but he has not brought case-papers. The witness also admitted that the history was not mentioned in the injury certificates. The witness did not depose that the injuries were possible by the muddamal articles rifle and pistol. In view of this, in our view, the prosecution failed to connect the respondents with the injuries.

29. The prosecution produced discovery panchanama at Exh. 133 and examined P.W. 26 Eqbalbhai Ahmadbhai Malek at Exh. 132. The witness did not support the prosecution case. The witness also denied that accused Nagji Shanker showed his willingness to show muddamal article pistol and that it was discovered at his instance.

30. The prosecution also examined P.W. 28 Dr. Sunilbhai Mavjibhai at Exh. 139. The witness had treated injured Babubhai Somabhai, Chhaganbhai Raisangbhai, Geetaben Ghanshyambhai, Mohanbhai Narsangbhai, Manishbhai Somabhai, Ajitbhai Udesinh, Savitaben Harmanbhai, Shardaben Dahyabhai, Hathesinh Kesarisinh and Dadusinh Jaswantsinh. The witness admitted that the injured did not give history of their injuries and that he cannot say the nature of cartridges and rifle. The witness admitted that he cannot say without seeing the cartridges that whether the shots were fired from muddamal article No.6 rifle or muddamal article No.7 pistol. In view of this evidence, it is difficult to believe that the injured sustained injuries from the firearms as

alleged by the prosecution.

31. The prosecution examined Police Sub-Inspector P.W. 29 M.B. Rathod at Exh. 158. The witness recorded complaint Exh.161 and carried out the investigation. The witness admitted that only rifle was recovered from the house of accused Mangalbhai. He also admitted that he did not collect any evidence with regard to use of the weapons. The witness also admitted that one Rajesh Gordhanbhai Patel had also lodged a complaint in respect of the same incident and it was revealed during the investigation that before the incident a quarrel took place between the complainant and accused Nagji and his son. In view of this evidence, it emerges that another complaint in respect of the same incident was also filed and there was no investigation with regard to the fact that whether the firearms recovered as muddamal articles were used in commission of offence.

32. The prosecution also examined Investigating Officer P.W. 30 Nagjibhai Khengarbhai at Exh. 165. The witness carried part of investigation. It appears from the

evidence of this witness that he also investigated the offence registered against the complainant in respect of the same incident.

33. In view of above, it becomes clear that there were disputes between the group of complainant and the respondents since long and there were quarrels between them in respect of election. It also appears that another complaint was filed against the complainant in respect of the same incident. According to the prosecution case accused Nagjibhai Chhotabhai and Kantilal were holding pistols and the injuries were caused to several persons by firing from pistols and rifle. However, there is no evidence to indicate that the injuries were caused by use of such weapons. The muddamal weapons were not sent to Balestic Expert for his opinion as to whether the muddamal weapons were used in the commission of the offence and cartridges recovered from the place of incident were fired from such weapons. Therefore, except the oral evidence that is also too vague and ambiguous, cannot be relied upon to connect the respondents with the offence. Even the

medical evidence does not indicate that the injuries caused to the injured were caused by the muddamal weapons. Therefore, in our opinion, the learned trial Judge was justified in not relying upon the evidence led by the prosecution.

34. In view of above, we do not find any reason to interfere with the findings recorded by the trial Court. Therefore, we are of the view that appeal does not merit acceptance. Hence, leave to appeal is refused and appeal stands dismissed.

(J.R. Vora,J.)

(Bankim N. Mehta,J.)

/JVSatwara/